

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID CHIDRAOUI, : Civil #: 18-CV-_____
Plaintiff, : () ()
: :
-against- : PLAINTIFF DEMANDS
FITNESS INTERNATIONAL, LLC, doing business as : A TRIAL BY JURY
L.A. FITNESS, : COMPLAINT
: :
Defendants. : :

Plaintiff, complaining of the defendant, by his attorneys, WAGNER & WAGNER, LLP, hereby alleges the following upon information and belief:

JURISDICTIONAL ALLEGATIONS AND JURY DEMAND

Subject Matter Jurisdiction – Diversity of Citizenship

1. At all times hereinafter mentioned, the plaintiff, David Chidraoui, was, and still is a citizen and resident of the State of New York.
2. Upon information and belief, at all times hereinafter mentioned, the defendant, Fitness International, LLC, was, and still is, a limited liability company organized and existing under and by virtue of the laws of the State of California, authorized to do business in the State of New York, with its principal place of business located at 2600 Michelson Drive #300, Irvine, CA 92612-6536.
3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that the plaintiff is a citizen of the State of New York; the defendant Fitness International, LLC is a California limited liability company with its principal

place of business located in California; and the amount in controversy, exclusive of interest and costs, exceeds the sum of Seventy-Five Thousand (\$75,000.00) Dollars.

Venue

4. The venue of this action in the Eastern District of New York is proper pursuant to 28 U.S.C. § 1331(a), in that jurisdiction is founded only on diversity and the Eastern District of New York is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

Jury Demand

5. The plaintiff demands a trial by jury of all issues in this action.

**ALLEGATIONS SETTING FORTH A CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF FOR PERSONAL INJURIES**

6. That this action falls within one or more of the exceptions set forth in Section 1602 of the Civil Practice Law & Rules.
7. That at all times herein mentioned, the real property known by the street address 3231 Richmond Avenue, Staten Island, New York (Tax Block 5533, Lot 58), together with improvements thereon and the appurtenances thereto, including, but not limited to a fitness center, including all equipment and installations used in connection therewith (hereinafter referred to collectively as "the Premises") was, and still is, a commercial premises.

8. That at all times hereinafter mentioned, the defendant, Fitness International, LLC, conducted business as a fitness center at the Premises (hereinafter referred to as the "Fitness Center").
9. That at all times, hereinafter mentioned, the defendant, directly and/or indirectly, through its servants, agents and/or employees maintained the Fitness Center.
10. That at all times, hereinafter mentioned, the defendant, directly and/or indirectly, through its servants, agents and/or employees managed the Fitness Center.
11. That at all times, hereinafter mentioned, the defendant, directly and/or indirectly, through its servants, agents and/or employees operated the Fitness Center.
12. That at all times, hereinafter mentioned, the defendant, directly and/or indirectly, through its servants, agents and/or employees controlled the Fitness Center.
13. At all times hereinafter mentioned, the defendant, had an affirmative duty to keep and maintain the Fitness Center, in good, whole, entire, safe, sound and suitable condition, free from hazards, nuisances, traps and dangerous and/or defective conditions.
14. On or about the 19th day of July, 2017, and for some time prior thereto, the defendant, through its agents, servants and employees, breached, violated and disregarded its affirmative duty, by causing suffering, permitting and allowing the Fitness Center, to become, be and remain in dangerous defective, unsafe and hazardous condition, so this it constituted a nuisance, hazard and trap to the unwary, particularly plaintiff herein.

15. On or about the 19th day of July, 2017, and for some time prior thereto, the defendant, in spite of actual notice, through its agents, servants and employees, breached, violated and disregarded its affirmative duty, by causing suffering, permitting and allowing the Fitness Center, to become, be and remain in dangerous defective, unsafe and hazardous condition, so this it constituted a nuisance, hazard and trap to the unwary, particularly the plaintiff herein.
16. On or about the 19th day of July, 2017, and for some time prior thereto, the defendant, in spite of constructive notice, through its agents, servants and employees, breached, violated and disregarded its affirmative duty, by causing suffering, permitting and allowing the Fitness Center, to become, be and remain in dangerous defective, unsafe and hazardous condition, so this it constituted a nuisance, hazard and trap to the unwary, particularly the plaintiff herein.
17. That on the 19th day of July, 2017, the plaintiff was lawfully present at the Fitness Center as a business invitee of the defendant.
18. At said time and place, while plaintiff was lawfully and carefully using the sauna upon the Premises, in the exercise of all due care, he was caused to suffer severe burns to his body, by reason of the aforesaid unsafe, defective, dangerous, and hazardous condition, thereby resulting in serious and permanent personal injuries to the plaintiff.
19. That the said occurrence was directly the result of, and was due solely and wholly to, the negligence, carelessness and recklessness of the defendant, its agents, servants and/or employees, in the ownership, operation, management,

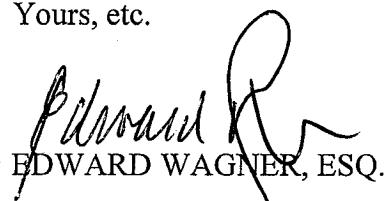
maintenance, supervision, inspection, repair and control of the Fitness Center, in particular in failing to use due care in the maintenance and operation of the sauna; in failing to use due care in the inspection and cleaning of the sauna; in failing to use due care in keeping the sauna free from debris, water bottles and/or any other items which would heat to dangerous temperatures inside the sauna; in failing to properly train the aforesaid servants, agents and/or employees of the defendant in the proper use of the sauna; all without any fault, negligence, assumption of risk, lack of care, inattention, inadvertence, poor judgement, want of diligence, or other culpable conduct on plaintiff part contributing thereto.

20. That directly as a result of said occurrence, plaintiff, sustained serious personal injuries, a severe shock to his nervous system, and certain internal injuries, and has been caused to suffer severe physical pain and mental anguish as a result thereof. Upon information and belief, some of these injuries are of permanent and lasting nature. Plaintiff has been rendered, sick, sore, lame, scarred, disfigured, scarred and disabled; he has been and may in the future be incapacitated from his usual daily activities; and he has been and will in future be required to seek, obtain and undergo hospital, surgical, and/or other medical care, attention and treatment in an effort to cure himself of his said injuries, and to expend and become obligated for out-of-pocket sums of money in connection therewith.
21. That by reason of the foregoing, the plaintiff has been damaged in the sum of One Million (\$1,000,000.00) Dollars.

WHEREFORE, the plaintiff, David Chidraoui, demands judgment against the defendant in the sum of One Million (\$1,000,000.00) Dollars, together with and in addition to the costs and disbursements of this action.

Dated: Staten Island, New York
January 25, 2018

Yours, etc.



EDWARD WAGNER, ESQ.

WAGNER & WAGNER, LLP
Attorneys for Plaintiff(s)
Office and Post Office Address
2508 Amboy Road
Staten Island, New York 10306
(718) 667-7400

INDIVIDUAL VERIFICATION

State of New York)
)
County of Richmond) S.S.:

David Chiraoui, being duly sworn, deposes and says that I am a Plaintiff in the within action; I have read the foregoing

COMPLAINT

and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

x Dan Meyer

David Chidraoui

Sworn to before me this 25th
day of JANUARY, 20 18

Notary Public

